PUBLIC HEALTH LAWS UNDER THE POLICE POWER.—The United States Supreme Court, which has gone very far in upholding, under the police power, state legislation that seemed to be in line with popular demands and the recent development of sociological jurisprudence,[1] has in the late case of the *Northwestern Laundry* v. *Des Moines* (1916) 239 U. S. 486, declared valid an anti-smoke ordinance enacted to preserve the public health. The ordinance was objected to as violating the Fourteenth Amendment to the United States Constitution in that it required expensive remodelling of existing equipment and conferred upon an officer called a Smoke Inspector unregulated discretion as to the requirements in each case. But the court, following the spirit of its recent decisions, held it to be a reasonable means of accomplishing the legitimate purpose of promoting the public health, and therefore a valid exercise of the police power.

The remarkable advance in sanitation during the last quarter century coupled with the ever-increasing tendency to submit every phase of human life to legislative regulation, has resulted of recent years in a vast amount of statutory law enacted really or ostensibly in the interest of the public health.[2] It is universally recognized that the preservation of the physical well-being of the people is one of the legitimate objects of legislative enactment within the vague and ill-defined limits of the police power,[3] but the question constantly arises whether a given statute is a legitimate exercise of that authority or whether it merely attempts to make of the police power an excuse for the infringement of constitutional rights. The mere fact that a statute requires the expenditure of money does not constitute a deprivation of property without due process of law,[4] even where large investments of capital made prior to the enactment are rendered unprofitable by its requirements, as in the principal case,[5] since, if the legislature has authority to regulate the subject under the police power, that authority always existed, and the fact that it was not previously exercised affords no ground for complaint when changing circumstances render it necessary. Nor is one whose business is subjected to regulation entitled to complain because the legislature had not seen fit to lay like restrictions upon other practices, equally amenable to control in the interests of the public health.[6] When and to what extent the

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[1]See articles by Charles Warren in 13 Columbia Law Rev., 294, 667.

[2]N. Y. Public Health Law (N. Y. 1909 Consol. Laws, Chap. 45); Mass. Rev. Laws 1902, Chap. 75, "Of the Preservation of the Public Health". Public Health Laws are to be distinguished from the exercise of the police power to prevent fraud, which is the basis of the recent decision of the United States Supreme Court, upholding § 8 of the Food and Drugs Act (37 Stat. 417), which forbids the interstate transportation of patent medicines in packages containing lying circulars as to their efficacy. Seven Cases Eckman's Alteration *v.* United States (1916) 239 U. S. 510.

[3]Freund, Police Power, §§ 122-133; Tiedeman, State and Federal Control etc., § 1.

[4]Health Department *v.* Rector, (1895) 145 N. Y. 32, 39 N. E. 833; Tenement House Department *v.* Moeschen (1904) 179 N. Y. 325, 72 N. E. 231; 4 Columbia Law Rev., 299.

[5]Hadacheck *v.* Sebastian (1915) 36 Sup. Ct. 143; Reinman *v.* Little Rock (1915) 237 U. S. 171, 35 Sup. Ct. 511; Matter of McIntosh *v.* Johnson (1914) 211 N. Y. 265, 105 N. E. 414.

[6]Hadacheck *v.* Sebastian, *supra*; *cf.* Williams *v.* Arkansas (1910) 217 U. S. 79, 30 Sup. Ct. 493.

police power shall be resorted to is a question for the legislature and not for the courts. So long as statutory classifications are reasonable, they do not invalidate an act applying equally to all persons in the same class,[7] and the power of the legislature may be delegated by it to such subordinate bodies as Boards of Alderman, Health Departments, etc.[8] But though the conduct of a business may be regulated in the interests of the public health the legislature has not power arbitrarily to forbid the carrying on of activities capable of being conducted in a manner not deleterious to public interest.[9] If a man can use his property for a particular purpose without injury to others he must be permitted to do so; yet any doubt on this point is resolved in favor of the validity of the legislation attacked.[10] Thus popular or general beliefs as to the unhealthful qualities of cemeteries[11] or the advantages of vaccination[12] justify legislative control of these matters, and evidence that such beliefs are erroneous is not to be addressed to the courts, since it is not their province to pass upon the expediency, but only upon the validity of a given enactment. Statutes requiring the vaccination of school-children or of all persons in infected areas illustrate the extent to which the police power justifies interference not only with the rights of property, but with the far more sacred inherent right to control one's personal activities in relation to the care of his own body and conduct. Thus it is competent for the legislature to impose restrictions upon marriage and even to prohibit it altogether in the case of epileptics, etc.,[13] and to restrict the freedom of contract of women,[14] children,[15] and those employed in unhealthly or dangerous activities.[16] It is therefore apparent that the health of generations yet unborn is as much within the scope of the police power as that of the present population; and, extensive as is the present field of sanitary legislation, we may look forward to still greater developments in this branch of the law, as a growing sense of social values further subordinates individual rights to what is, or what is deemed to be, the interest of society as a whole.

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[7]Reinman *v.* Little Rock, *supra*; Williams *v.* Arkansas, *supra*.

[8]Jacobson *v.* Mass (1904) 197 U. S. 11, 25 Sup. Ct. 358. This is also pointed out in the principal case.

[9]People *v.* Wiener (Ill. 1915) 110 N. E. 870; *In re* Kelso (1905) 147 Cal. 609, 82 Pac. 241; Town of Greensboro *v.* Ehrenreich (1886) 80 Ala. 579, 2 So. 725; Town of Cuba *v.* Mississippi Cotton Oil Co. *et al* (1907) 150 Ala. 259, 43 So. 706; see Durgin *v.* Hinot (1909) 203 Mass. 26, 89 N. E. 144.

[10]Price *v.* Illinois (1915) 238 U. S. 446, 35 Sup. Ct. 892; *Ex parte* Boyce (1904) 27 Nev. 299, 331, 75 Pac. 1.

[11]Laurel Hill Cemetery *v.* San Francisco (1909) 216 U. S. 358, 30 Sup. Ct. 301.

[12]Matter of Viemiester (1904) 179 N. Y. 235, 72 N. E. 97; Jacobson *v.* Mass, *supra*.

[13]Gould *v.* Gould (1905) 78 Conn. 242, 61 Atl. 604; 14 Columbia Law Rev., 599; 27 Harvard Law Rev., 573.

[14]Bosley *v.* McLaughlin (1915) 236 U. S. 385, 35 Sup. Ct. 345; People *v.* Charles Schweinler Press (N. Y. 1914) 163 App. Div. 620, 148 N. Y. Supp. 725; 14 Columbia Law Rev., 692.

[15]Sturgis & Burn *v.* Beauchamp (1913) 231 U. S. 320, 34 Sup. Ct. 60.

[16]*Ex parte* Kair (1905) 28 Nev. 127, 80 Pac. 463; *Ex parte* Boyce, *supra*; 5 Columbia Law Rev., 613.